

lower guideway may be at ground level and the height of the ball above the ground may be adjustable.--

REMARKS

The Office Action dated October 22, 2001, has been carefully considered. In response thereto, the present application has been amended in a manner that is believed to place it into condition for allowance. Accordingly, reconsideration and withdrawal of the outstanding Office Action and issuance of a Notice of Allowance are respectfully requested.

In the present Office Action, the Examiner has objected to the disclosure because it does not include an ABSTRACT. In response to this objection, Applicant includes herewith as part of this Amendment an ABSTRACT.

The Examiner has objected to Claims 11, 13, 15, 16, 18, 19, 22, 23 and 25 as being in improper form. Applicant has amended those claims to replace the objectionable language.

The Examiner has also objected to Applicant's Preliminary Amendment dated June 29, 2000, to the extent that Claims 5 and 10 do not recite the terms "any one of the preceding claims." Applicant has amended Claim 5 to remove the multiple dependency and has not amended Claim 10. Accordingly, please disregard the Preliminary Amendment with respect to Claims 5 and 10 and kindly enter the amendment of Claim 5 contained herein and do not amend Claim 10 as requested in the Preliminary Amendment.

The Examiner has rejected Claims 1-27 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as his invention. Specifically, the Examiner has rejected Claims 6, 13, 14, 17, and 22-25 because those claim contain terms like "and/or" or "or the like" and render the scope of the claims unascertainable. The Examiner has also rejected Claim 27 because it is an omnibus type claim. In response to those rejections, Applicant has amended Claims 6, 13, 14, 17, and 22-25 to remove the offending terms and has cancelled Claim 27. Applicant respectfully submits that the amended claims are now not indefinite.

The Examiner has rejected Claims 1, 3, 4, 6-12, 16-20, 22, 25, and 26 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,138,107 to *Janis* in view of U.S. Patent No. 5,713,805 to *Scher et al.* or, in the alternative, in view of U.S. Patent No. 5,460,364 to *Ring*. For the following reasons, Applicant respectfully submits that those claims are considered to be clearly and patentably distinguished over any one, or a combination of, the cited patent references.

In making the above § 103(b) rejection, the Examiner observes that *Janis* discloses a ball-supporting cord which is substantially inelastic. Applicant respectfully submits that this interpretation is incorrect. The ball-carrying member 14 disclosed in *Janis* is an elastic cord (see Col. 1, lines 58-59 and 65; Col. 2, lines 35, 41, and 56; Col. 3, line 38; Col. 4, lines 14, 16, 19, 48, 50, 53 and 60; and the Abstract, lines 6, 7, and 13).

A feature of the claims of the present Application is that the reciprocating means to which a ball is connected is substantially inelastic. As explained in the specification, inelasticity of the ball-carrying cord ensures that the ball maintains a controlled horizontal trajectory regardless of the angle at which the ball is struck. It also ensures that the length of the reciprocating means becomes limiting in relation to the distance between the ball-supporting guideways thereby causing the ball to be deflected back to the player. The trajectory of a ball supported from an elastic cord will not properly replicate the trajectory of an unconfined ball struck, for example, by a golfer on a golf course. It is Applicant's contribution to the art that the ball-supporting cord is connected at its terminal ends to guideways and that the ball-supporting cord is substantially inelastic.

In *Janis*, the ball-supporting cord is connected to rigid rails 10, 12. The rigidity of these rails means that the ball-carrying cord of *Janis* must be elasticated. Use of the apparatus disclosed in *Janis* will not consequently provide the controlled horizontal trajectory of the ball which is achieved by the apparatus disclosed and claimed in the present Application. Accordingly, Applicant's claims are considered to be clearly distinguished over the teaching of *Janis* through their recitation that the reciprocating means is substantially inelastic.

The apparatus disclosed in *Scher et al.* differs substantially from the apparatus disclosed in *Janis* and that disclosed and claimed in the present Application. In *Scher et al.*, a baseball practice device comprises a ball suspended by a “Y” shaped tether system from a yoke carried by an upstanding support. The ball-supporting cord can be either elastic or non-elastic. *Scher et al.* does not disclose guideways to which the ball carrying cord is connected. Neither does it disclose the equivalent of Applicant’s (or indeed *Janis*’) reciprocating means. Accordingly, the claims of the present Application are clearly distinguished over the disclosure of *Scher et al.* through their recitation of the first and second guideways and by reciprocating means connected to and freely movable along guideways.

The apparatus disclosed in *Ring* is similar to that disclosed in *Scher et al.* except that in *Ring* the tether from which the ball is suspended is said to be resilient.

The Examiner argues that it would have been obvious to one of ordinary skill in the art to substitute the elastic reciprocating means of *Janis* with a substantially inelastic reciprocating means as taught by *Scher et al.* and as described by *Ring*. In the latter context, it is important to stress that the tether disclosed by *Ring* is said to be flexible.

As indicated above, the practice devices disclosed by *Scher et al.* and *Ring* have little or no resemblance to that disclosed and claimed in the present Application. There is no teaching in any of the three documents that would lead a person skilled in the art to modify the ball-carrying cord retained at its terminal ends between rails as disclosed by *Janis* with a non-elasticated cord from which a ball is suspended and which is attached at one end to a horizontal arm as disclosed by *Scher et al.* or *Ring*. Indeed, the disclosures of the three documents teaches away from the invention claimed in the present Application. For all of the foregoing reasons, Applicant respectfully submits that Claims 1, 3, 4, 6-12, 16-20, 22 and 26 would not have been obvious at the time of the invention.

Claims 13 and 23 have been rejected under 35 U.S.C. § 103(b) as being unpatentable over *Janis*, *Scher et al.*, and *Ring* in view of U.S. Patent No. 3,630,521 to *Lingbeek*. Applicant respectfully submits that *Lingbeek* adds nothing to the previously discussed disclosure of *Janis*.

As in *Janis*, the ball-supporting cord is elastic (see Col. 1, line 45; Col. 2, lines 4, 5, 9, 10, 19, 37, 39, 41, and 42). The same arguments recited above do, therefore, apply equally to a combination of patent teachings including *Lingbeek*.

Claims 2, 5, 14, 15, 21 and 24 have been rejected under 35 U.S.C. § 103(b) as being unpatentable over *Janis*, *Scher et al.*, *Ring*, and *Lingbeek* in view of U.S. Patent No. 3,086,775 to *Albert*. The practice device disclosed in *Albert* is similar to that disclosed in *Scher et al.* and in *Ring* except that in *Albert* the cord from which a ball is suspended carries at its upper end a pulley that runs over an inclined line. The ball-supporting cord is produced from a length of rubber tubing and is flexible. As will be evident to anyone skilled in the art, a function of the bottom guideway of the invention disclosed and claimed in the present Application is to prevent the excessive swinging motion that would be induced using a practice device as disclosed in *Albert*. Thus, the bottom guideway of the present Application ensures controlled lateral movement of the ball once struck by the user. There is no ^{re}semblance of control in the practice device disclosed in *Albert*. For the aforementioned reasons, Applicant respectfully submits that any combination of the teachings of the cited patent references when taken with the disclosure of *Albert* does not anticipate or render obvious under § 103(a) the subject matter of Applicant's claims.

Accordingly, the Applicant respectfully requests that the Examiner's objections and rejections of the disclosure and the pending claims be withdrawn and a Notice of Allowance be issued.

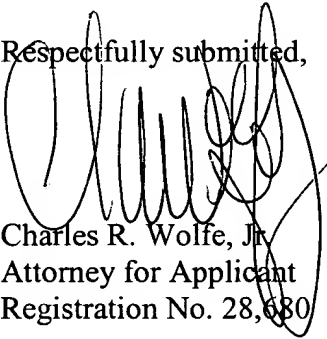
Please charge any shortage or credit any overpayment of fees to Deposit Account No. 23-2185 (112134-00102). In the event that a petition for an extension of time is required to be submitted herewith and in the event that a separate petition does not accompany this response, the Applicant hereby petitions under 37 CFR § 1.136(a) for an extension of time for as many months as are required to render this submission timely. Any fee due is authorized above.

Serial Number: 09/582,556
Atty. Ref: 112134-00102

Finally, attached hereto is a marked-up version of the changes made to the claims by the current Amendment. The attached page is captioned "VERSION WITH MARKINGS TO SHOW CHANGES MADE."

If there are any questions relating to this amendment or the application in general, it would be appreciated if the Examiner would telephone the undersigned attorney.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles R. Wolfe, Jr.", is written over the typed name and registration number. A long, thin horizontal line extends from the right side of the signature.

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the Claims

-- 5 (Once Amended). Apparatus according to [any one of the claims 1 to 3] claim 1, wherein the upper and lower guideways lie in a plane which is inclined to the ground.--

-- 6 (Twice Amended). Apparatus according to claim 1, wherein the upper [and/or] or
lower guideway[s are] is attached to a stable support.--

-- 9 (Twice Amended). Apparatus according to claim 1, wherein the reciprocating means comprises one or more upstanding [line(s)] lines connected to the upper and lower guideways.--

Slidably

-- 11 (Once Amended). Apparatus according to [any one of the preceding claims] claim
1, wherein the reciprocating means is connected to the upper and lower guideways means
through a slide.--

-- 13 (Once Amended). Apparatus according to [any one of the preceding claims] claim 1, wherein the upper and lower guideways [and/or] or the reciprocating means are made of a low friction material.--

-- 14 (Once Amended). Apparatus according to claim 13 wherein the upper and lower guideways [and/or] or the reciprocating means are made of plastics covered cord or wire.

-- 15 (Once Amended). Apparatus according to [any one of the preceding claims] claim 1, wherein the upper and lower guideways and the reciprocating means are made from the same material.--

-- 16 (Once Amended). Apparatus according to [any one of the preceding claims] claim 1, wherein the upper and lower guideways are made of a substantially rigid material.--

-- 17 (Once Amended). Apparatus according to claim 16 wherein the upper [and/or] or lower guideway[s take the form of] comprises a plastics track which is capable of receiving a runner to which the reciprocating means is connected.--

~~-- 18 (Once Amended). Apparatus according to [any one of the preceding claims] claim 1, wherein the ball can be connected at any point along the reciprocating means.--~~
~~slidably~~

-- 19 (Once Amended). Apparatus according to [any one of the preceding claims] claim 1, wherein the ball is one of a tennis ball, a baseball, a rounders ball, a cricket ball, a hockey ball, [or] and a golf ball.--

~~-- 22 (Once Amended). Apparatus according to claim 20 [or claim 21], wherein the upper or lower guideway comprises [a guideway in the form of] a string[,] or rope [or the like] stretched between two spaced supports.--~~

-- 23 (Once Amended). Apparatus according to [any one of claims 20 to 22] claim 20, wherein the upper [and/or] or lower guideway[s] [and/or] or upstanding [line(s) is/are] lines are coated with or formed from a material being of relatively low friction properties.--

-- 24 (Once Amended). Apparatus according to claim 23, wherein the upper [and/or] or lower guideway[s] [and/or] or upstanding [line(s) is/are] lines are coated with or formed from a plastics material.--

-- 25 (Once Amended). Apparatus according to [any one of the claims 20 to 24] claim 20, wherein the upstanding [line(s) is/are] lines are connected to the upper [and/or] or lower guideway by a slide.--